IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 776 OF 2006

Kotak Mahindra Capital Co.Ltd. ... Petitioner.

V/s.

WITH

COMPANY PETITION NO. 777 OF 2006

Kotak Mahindra Bank Limited. ... Petitioner.

In the matter of Scheme of Arrangement between Kotak Mahindra Capital Company Limited; Kotak Mahindra Bank Limited and their respective shareholders and creditors.

Prashant Beri i/b. Beri & Co.
for the petitioners.

None for the intervener.

Ms.Madhuri Gaikwad for the Regional Director.

CORAM: V.C.DAGA, J.

DATED: 15th February 2007.

P.C.:

. Heard Mr.Prashant Beri, learned counsel appearing for the petitioners. None for the intervener in spite of service though he appeared when order dated 9th February, 2007 was passed.

2. Learned counsel appearing for the

petitioners brought to my notice that vide a

common order dated 9th February, 2007 four company petitions, viz.; Company Petition Nos.676/2006; 677/2006; 776/2006; and 777/2006 were disposed of. He submits that separate orders should have been passed in two sets; one in Company Petition Nos.676/2006 with 677/2006 and another in Company Petition Nos.776/2006 with 777/2006. According to him, a common order is likely to cause confusion and administrative difficulty in processing the matter with the Registrar of Companies and other authorities. He has also pointed out some typographical errors crept in the said order.

3. In the above view of the matter, in order to avoid any confusion, the order dated 9th February, 2007 needs to be modified. Accordingly order dated 9th February, 2007 is recalled and the orders are passed, separately, in two different sets of petitions. The following order is passed in Company Petition Nos.776/2006 with 777/2006:

> (1) Petitioner has filed this petition seeking this Court’s sanction to the scheme of arrangement between Kotak Mahindra Capital Company Limited (hereinafter referred to as the "Demerged Company" or

"Transferor Company"); Kotak Mahindra Bank Limited (hereinafter referred to as the "Resulting Company" or "Transferee Company"); their respective shareholders and creditors under Sections 391 to 394 of the Companies Act, 1956.

(2) The Regional Director, Western Region, Ministry of Company Affairs ("Regional Director" for short) has filed affidavit dated 2nd February, 2007 and has contended that he has no objection for accepting the scheme.

(3) Pursuant to the advertisement of the petition in "Indian Express" and "Loksatta", the intervener has raised objection to the acceptance of the scheme contending that three companies are functioning under the identical names i.e. Kotak Mahindra Capital Company Ltd. bearing different Company Identity Numbers (CIN). It is further contended that all the three Companies under the same name are registered on different dates and bearing different Company Identity

Numbers (CIN) which is not permissible under section 20 of the Companies Act,1956.

(4) In reply, Mr Tulzapurkar, learned Senior Counsel appearing for the petitioner raised a preliminary objection and challenged locus of the intervener to object to the scheme contending that the objector is neither a shareholder nor has any concern with either of the companies in the Scheme. He has filed an affidavit of one Mr.Jaimin Bhatt, Director of the Demerged Company bringing current position, as regards registration of the Company having name "Kotak Mahindra Capital Limited" i.e. the Resulting Company bearing a CIN-U67120MH2001PLC134050; and brought on record that on the website of the Ministry of Company Affairs, Government of India, wrong information was placed showing three companies having identical name carrying different CIN. He further submits that there is no other Company other than the one mentioned in the affidavit. The said factual position is affirmed by the learned

counsel for the Regional Director.

(5) In the above view of the matter, objection raised by the intervener stands over ruled for want of locus as well as on merits being devoid of any substance.

(6) No other objector has come forward to take objection to the Scheme of Arrangement.

(7) In the above premises, Company Petition Nos.776/2006 and 777/2006 are made absolute in terms of prayer clause (a) to (f) of the respective petitions subject to payment of costs, in each case, to the to Regional Director, quantified @ Rs.2,500/- per petition.

(8) All concerned including Registrar of Companies to act on an ordinary copy of this order and scheme annexed to the petition, duly authenticated by the Company Registrar. Filing of drawn up order is dispensed with.

(V.C. DAGA,J.)